

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC.31 Animal/Pest Handler	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is in the business of dog daycare offering boarding, retail services, and dog grooming. The worker was engaged by the firm as a dog groomer. The firm reported the worker's remuneration on Forms 1099-MISC for 2012 and 2013.

Information from the parties supports that the firm relied upon the worker's prior training and experience to perform her services. The firm stated that it notified the worker by phone or text when work was available. The worker stated that customers checked into the firm's front desk and completed a form with instructions on how they wanted their dog groomed. The worker's schedule was dependent upon the work scheduled. If problems or complaints occurred, the worker contacted the firm; both parties worked to find a resolution to make the customer happy. The firm stated that the worker often brought her own clients' dogs into the shop to groom; the firm then billed for services on the worker's behalf. The worker performed her services on the firm's premises. She was required to perform her services personally.

The firm provided the tub, shampoo, towels, and the property. The worker provided her own grooming equipment. The worker did not lease space from the firm. The firm paid the worker on a commission basis. It covered her under workers' compensation. Customers paid the firm directly at prices established by the worker in consultation with the firm. Neither party indicated an investment by the worker in the firm or a related business. The worker's risk of loss involved the loss or damage to her equipment or non-payment/refund of payment.

The firm did not make general benefits available to the worker. It did not prohibit the worker from performing similar services for others during the same time period. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability, and in fact, the firm fired the worker.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, while the firm relied upon the worker's prior training and experience to perform her services, it was ultimately responsible for resolving any problems or complaints that may have occurred. It retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and ensure its customers' satisfaction with the work. The worker performed her services on the firm's premises. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. The worker was required to perform her services personally, meaning she could not engage and pay others to perform services for the firm on her behalf. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not rent or lease space, invest capital, or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker provided her personal grooming tools. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. The firm paid the worker on a commission basis. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of, employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed were part of the service recipient's regular business activities. In this case, the worker performed her services on a continuing basis. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The worker was not engaged in an independent enterprise, but rather the grooming services performed by the worker were a necessary and integral part of the firm's business of offering dog care services. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. The worker could have performed similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although the firm did not provide benefits to the worker, it terminated the work relationship without incurring a liability. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. These facts show that the firm retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.